

Amendment under 37 CFR § 1.111
Application No. 10/694,442
Attorney Docket No. 032065

REMARKS

Claims 1-4 and 6 are pending in the present application. Claims 1 and 6 are herein amended. Claims 5 and 7-9 are cancelled.

Allowable Subject Matter

The Examiner stated that claim 5 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Independent claim 1 has been amended by adding the limitations of allowable claim 5. Withdrawal of the rejection of claim 1 is requested.

Claim Rejections

Claims 1-3 and 7-9 were rejected under 35 U.S.C. § 103 as being obvious over *Spaur* (U.S. Patent No. 6,516,192) in view of *Gilham* (U.S. Patent Application Publication 2002/0086681) and claims 4 and 6 were rejected under 35 U.S.C. § 103 as being obvious over *Spaur* in view of *Gilham* and based on the Examiner's Official Notice. Favorable reconsideration of the rejection is requested.

Claims 2-4 depend from allowable claim 1. Accordingly, withdrawal of the rejection of claims 2-4 is requested.

Claim 6 has been amended into independent form to recite the limitations of base claim 1. In addition, claim 6 has been amended to clearly recite that if the communication condition is already set and stored in the memory of the communication control unit, then the condition setting unit sets the communication condition based on the stored communication condition

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when the power source of the wireless communication devices is switched on. This feature is described in the Specification at pages 21 to 22 as the “modified example.” The feature is also shown in Fig. 7. As described in the Specification, the feature allows for communications to start without executing the process of acquiring the position information and the process of setting the communication conditions when switching the power source “on” the second and subsequent times while the device is in the same place. (Specification, page 22, lines 6-26.)

The Examiner acknowledges that neither *Spaur* nor *Gilham* discloses such a feature. (Office Action, page 3.) However, the Examiner takes official notice that this feature is known in the art.

Applicant respectfully submits that the features recited in amended claim 6 are not known in the art. Specifically, the following features of a wireless communication device are not known in the art:

wherein said communication control unit has a memory for storing the communication condition when a power source of said wireless communication device is switched OFF; and

wherein said condition setting unit sets the communication condition based on said stored communication when said power source of said wireless communication device is switched ON.

as recited in amended claim 6.

In addition, Applicant submits that the Examiner did not provide clear reasoning to support the allegation that the feature is known in the art. The MPEP describes the requirements for taking Official Notice:

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If such [official] notice is taken, the basis for such reasoning must be set forth explicitly. The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.

MPEP § 2144.03(B) citing *Soli*, 317 F.2d at 946; *Chevenard*, 139 F.2d at 713. The Examiner merely states that the feature is known in the art without providing factual findings or scientific reasoning to support the conclusion.

The features of claim 6 are not taught or suggested in either *Spaur* or *Gilham*, and they are not known in the art.

Accordingly, withdrawal of the rejection of claim 6 is hereby solicited.

In view of the aforementioned amendments and accompanying remarks, Applicant submits that that the claims, as herein amended, are in condition for allowance. Applicant requests such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney to arrange for an interview to expedite the disposition of this case.

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If this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
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